

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of Randall Ehrlich

Docket No. C2020-1

PRESIDING OFFICER'S RULING SCHEDULING PREHEARING TELECONFERENCE
AND ESTABLISHING INITIAL CASE MANAGEMENT PROCEDURES

(Issued March 18, 2020)

I. INTRODUCTION

On March 17, 2020, the Commission appointed the undersigned as the Presiding Officer to set a procedural schedule and conduct limited discovery for the purpose of determining disputed issues of fact in this case.¹ After examination of the disputed issues identified by the Commission, the Presiding Officer will provide a public, written intermediate decision including findings of fact and conclusions of law on the issues raised in this proceeding. *Id.* To complete these objectives expeditiously, efficiently, and fairly, a prehearing teleconference is scheduled to be conducted before the Presiding Officer on Wednesday April 15, 2020 at 1:00 p.m. Eastern Daylight Time (10:00 a.m. Pacific Daylight Time).

Additionally, initial case management procedures are established to be proportional to the needs of this case and tailored to address certain circumstances affecting logistics. The Complainant, post office and carrier at issue, and Complainant's

¹ Order Denying Postal Service Motion to Dismiss Complaint and Notice of Limited Formal Proceedings, March 17, 2020, at 8 (Order No. 5455).

counsel are located in the state of Washington.² The Commission's office and counsel for the Postal Service are located in Washington, DC. Both locations are significantly affected by the COVID-19 outbreak and are subject to both federal and local declarations of emergency.³ To ensure the continuity of the Commission's mission and safety of its workforce, the Commission has temporarily suspended on-site operation due to the impact of COVID-19. The Commission is fully operational and conducting all business as normal from remote workstations. The Commission's website at <http://www.prc.gov> will continue to accept filings from 8:00 a.m. through 4:30 p.m. Eastern Daylight Time, except for Saturdays, Sundays, and Federal holidays.

II. PREHEARING TELECONFERENCE

A prehearing teleconference is scheduled to be conducted before the Presiding Officer on Wednesday April 15, 2020 at 1:00 p.m. Eastern Daylight Time (10:00 a.m. Pacific Daylight Time).

No later than April 1, 2020, both parties must identify a single attorney (and provide their direct dial telephone number and e-mail address) to both opposing counsel and the Presiding Officer for the purposes of receiving logistical communications related to this teleconference. If either party seeks an extension of time or continuance to complete activities related to the prehearing teleconference, counsel must make a good faith effort to confer with opposing counsel to determine a proposed mutually agreeable date before contacting the Presiding Officer to request a scheduling change. This "good

² See Complaint of Randall Ehrlich, December 23, 2019, at 1-2.

³ See, e.g., Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, March 13, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak>; Declaration of Public Emergency: Coronavirus (COVID-19), March 11, 2020, available at https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/release_content/attachments/MO.DeclarationofPublicEmergency03.11.20.pdf; Proclamation by the Governor, February 29, 2020, available at https://www.governor.wa.gov/sites/default/files/20-05%20Coronavirus%20%28final%29.pdf?utm_medium=e-mail&utm_source=govdelivery.

faith effort” requires at least the placing of one telephone call or the forwarding of one e-mail message to opposing counsel.

At the teleconference, counsel for the Complainant and the Postal Service shall be prepared to discuss the matters specified in 39 C.F.R. § 3001.24(d) and the following matters:

1. The status of any initial settlement discussions or a statement of whether the parties will engage in initial settlement discussions,
2. Their expected discovery needs and their corresponding proportionality to the limited scope of issues presented by this case,
3. The best methods for the timely and cost-effective exchange of information,
4. Proposed cut-off dates for the parties to request that the Presiding Officer obtain specific discovery,
5. Issues related to the discovery and preservation of electronically stored information, and
6. Whether either party believes that it may seek non-public (confidential) treatment for any materials, and if so, the protective conditions needed to protect the affected interests.

Counsel for the Complainant and the Postal Service are directed to confer at least one week before the teleconference date to consider the matters specified in 39 C.F.R. § 3001.24(d) and in this Presiding Officer’s Ruling. The joint prehearing conference memorandum, with any related proposed stipulations and a joint statement clarifying any issues for which the parties cannot agree to a mutually acceptable process, must be filed no later than Friday April 10, 2020, at 4:30 p.m. Eastern Daylight Time (1:30 p.m. Pacific Daylight Time) on the Commission’s website.

After the teleconference, a Presiding Officer’s Ruling will be filed on the record describing the matters discussed, any stipulations reached by the parties, and any rulings issued by the Presiding Officer.

III. INITIAL CASE MANAGEMENT PROCEDURES

Understanding that counsel have obligations to their clients, the Presiding Officer expects that all counsel will work cooperatively and professionally to facilitate the expeditious, efficient and fair resolution of this case. Because of the limited scope of issues presented by this case and the logistical issues presented by the geographic distance and the COVID-19 outbreak, the following initial case management procedures are established.

Counsel must familiarize themselves with the Commission's rules.⁴

Neither the parties nor counsel should contact the Presiding Officer *ex parte*. See 39 C.F.R. § 3001.23(c). Unless otherwise authorized, all substantive communications with the Presiding Officer shall either be by filing a motion using the Commission's website or by attaching a letter to an e-mail message. To expedite procedural and scheduling matters, counsel may contact the Presiding Officer by an e-mail message. All e-mail messages sent to the Presiding Officer at lauren.dagostino@prc.gov must cc opposing counsel.

Pursuant to Order No. 5455, parties may request that the Presiding Officer obtain specific discovery, but may not independently propound discovery. Order No. 5455 at 8. Such requests may be transmitted via an e-mail message addressed to the Presiding Officer, which must cc opposing counsel and attach the proposed discovery requests as word document(s).

Further procedures will be discussed at the teleconference and additional Presiding Officer's Rulings may issue as needed.

⁴ The existing rules of practice and procedure are codified at 39 C.F.R. part 3001. The Commission is adopting final regulations that reorganize these rules, effective April 20, 2020. See Docket No. RM2019-13, Order Reorganizing Commission Regulations and Amending Rules of Practice, January 16, 2020, at 21 (Order No. 5407). To minimize confusion and because this complaint was filed on December 23, 2019, counsel are directed to continue to refer to the existing rules appearing in 39 C.F.R. part 3001 after April 20, 2020. See *id.* at 22.

IV. RULING

1. A prehearing teleconference is scheduled to be conducted before the Presiding Officer on Wednesday April 15, 2020 at 1:00 p.m. Eastern Daylight Time (10:00 a.m. Pacific Daylight Time).
2. Counsel for the Complainant and the Postal Service are directed to confer at least one week before the teleconference date to consider the matters specified in 39 C.F.R. § 3001.24(d) and in this Presiding Officer's Ruling.
3. The joint prehearing conference memorandum, with any related proposed stipulations and a joint statement clarifying any issues for which the parties cannot agree to a mutually acceptable process, must be filed no later than Friday April 10, 2020, at 4:30 p.m. Eastern Daylight Time (1:30 p.m. Pacific Daylight Time) on the Commission's website.
4. The parties and counsel shall follow the initial case management procedures established by this Presiding Officer's Ruling.

Lauren A. D'Agostino
Presiding Officer